

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

**IN RE:   ETHICON, INC.,  
          PELVIC REPAIR SYSTEM  
          PRODUCTS LIABILITY LITIGATION**

**MDL 2327**

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SHERRY HOPPER,

Plaintiff,

v.

CIVIL ACTION NO. 2:12-cv-04084

JOHNSON & JOHNSON, and  
ETHICON, INC.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

On September 13, 2018, defendants’ counsel filed a Suggestion of Death noting the death of plaintiff Sherry Hopper during the pendency of this action [ECF No. 55]. Defendants also filed Defendants’ Rule 25(A)(1) Motion to Dismiss and Memorandum of Law in Support on March 29, 2019 [ECF No. 65] requesting dismissal of this case because the deceased plaintiff has not been substituted. There has been no response to the motion.<sup>1</sup>

Pretrial Order (“PTO”) # 308 filed in *In re: Ethicon, Inc., Pelvic Repair Sys. Prods. Liab. Litig.*, 2:12-md-2327 (“Ethicon 2327”) [ECF No.6218] outlines the procedures the court requires to either substitute a deceased party pursuant to Federal Rule of Civil Procedure 25(a), or to dismiss

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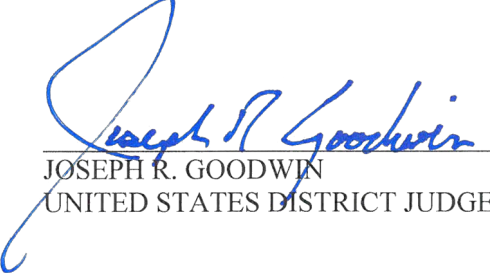
<sup>1</sup> Plaintiff’s counsel has filed two Motions to Withdraw as Counsel stating that decedent’s successors failed to adequately respond to counsel’s service of the Suggestion of Death.

the deceased party from the civil action because of a failure to properly serve and substitute the deceased party.

The court **FINDS** that the Suggestion of Death with the subsequent Notice of Proof of Service filed on December 4, 2018 [ECF No. 61], complied with Rule 25(a). The 90-day time period as set forth in Rule 25(a) to substitute a party has passed and the deceased plaintiff has not been substituted. Therefore, the court **ORDERS** that this case is **DISMISSED** without prejudice and **STRICKEN** from the docket of this court. Any pending motions are **DENIED as moot**.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: October 9, 2019



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE